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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,892	04/26/2006	Naotaka Tsunoda	279196US6PCT	1764
22850 7590 02/03/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER ROBINSON, RYAN C				
ART UNIT 2614		PAPER NUMBER		
NOTIFICATION DATE 02/03/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/560,892

Applicant(s)

TSUNODA, NAOTAKA

Examiner

RYAN C. ROBINSON

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 3-5, 8, 9 and 11-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 7 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/16/2005; 2/22/2007
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit **2614**.
2. This communication is responsive to the applicant's response/amendment filed on 11/10/2008.
3. Newly submitted claims 11-13 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 11 is directed to a headphone with a back housing portion formed of an air-permeable porous material. In originally presented claim 1, as best understood by the Examiner, the "back housing portion" was interpreted as an exclusion portion of the space that the baffle portion surrounded. Although an air permeable porous material was disclosed, the material was directed to the baffle portion, and not the "back housing portion".

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 11, and dependent claims 3-5, 8-9 and 12-13 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1-2, 6-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Siska et al., U.S. Patent No 6,466,681, published on 10/15/2002 (hereby Siska).**

6. As to claim 1, Siska teaches a headphone apparatus (Fig. 4A), wherein a baffle portion (15) formed to surround a space except a front opening portion of a driver unit (16). (There is an opening in the baffle portion [15] shown in Fig. 2).

7. As to claim 2, Siska teaches that the baffle portion (15) is approximately cone-shaped. The opening widens along the axis pointing away from driver (16), and therefore is approximately cone-shaped.

8. As to claim 6, Siska teaches that the driver unit (16) is provided in a bridge portion (18) shaped like an arch forming a bridge to a rim (14) which forms a frame.

9. As to claim 7, Siska teaches that the cone shape of the baffle portion (15) is asymmetrical with respect to the axis of the cone. Along the axis pointing away from driver (16), the baffle width is greater on the side of component (20) than on the opposite side, suggesting asymmetry.

10. As to claim 10, Siska teaches that a microphone device (Fig. 1, element 30) is attached to the headphone apparatus (1).

Response to Arguments

11. Applicant's arguments, see page 7, filed 11/10/2008, with respect to the rejection of amended claim 1 under 35 U.S.C. § 112, Second Paragraph, have been fully considered and are persuasive. Claim 1, as amended on 11/10/2008, overcomes the 35 U.S.C. § 112, Second Paragraph rejection.

12. Applicant's arguments filed 11/10/2008, with respect to the rejection of amended claims 1-10 and new claims 11-13 under 35 U.S.C. § 102(b) have been fully considered but they are not persuasive. Regarding claim 1, Siska does teach that the baffle (15) surrounds a space except a front opening portion of a driver unit. Fig. 2 clearly shows an opening in the baffle (15), which is directly in front of the driver unit (16). Dependent claims 2, 6-7 and 10 also stand rejected under 35 U.S.C. § 102(b).

Newly submitted independent claim 11, on which claims 3-5, 8-9 and 12-13 depend, is withdrawn as being directed to a non-elected invention, therefore rendering arguments to the rejections of claims 3-5, 8-9 and 12-13 moot.

Conclusion

The prior art made of record

- a. US Patent Number **6,466,681**

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan C. Robinson whose telephone number is (571) 270-3956. The examiner can normally be reached on Monday through Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ryan Robinson

/Suhan Ni/
Primary Examiner, Art Unit 2614